

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-029-00095R

Parcel No. 16-08-185-004

Marsha Bence (Irma Merrill),

Appellants,

vs.

Des Moines County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on November 22, 2019. Irma Merrill is represented by Marsha Bence, who filed this appeal, and Mac Osburne, who represented Merrill at hearing. Both Bence and Osburne testified at hearing. Attorney Todd Chelf represented the Des Moines County Board of Review.

Irma Merrill owns a residential property located at 1706 South 16th Street, Burlington. The subject's 2019 assessment was \$109,800. (Ex. B).

Merrill petitioned the Board of Review claiming the property's assessment was not equitable and that there was an error in the assessment under Iowa Code § 441.37(1)(a)(1 & 4) (2019). The Board of Review lowered the assessment to \$97,900, allocated as \$8,400 in land value and \$89,500 in dwelling value. (Ex. A).

Merrill then appealed to PAAB. On the Appeal, Merrill indicated her claim was inequity in the assessment. However, her plain statement indicated she asserts the property is assessed for more than authorized by law. § 441.37(1)(a)(2). At hearing, the

parties agreed the claim before PAAB is whether the property is assessed for more than authorized by law.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2018). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-71.126.2(2-4). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009)(citation omitted).

Findings of Fact

The subject is 0.141-acre site improved with a one-and-a-half-story home built in 1941. The home has 1408 square feet of gross living area; a full, unfinished basement; a patio; and two enclosed porches. The dwelling is listed as average-quality construction (4+00 grade) in normal condition. There is also a 660-square-foot detached garage built in 1988.

Bence testified Irma Merrill is an elderly woman who has not been able to make improvements to the property for the past 20 years. Bence noted the subject has only two bedrooms, and you have to walk through one bedroom to access the second. Additionally, the only bathroom is old and outdated and lacks a shower. Likewise, the kitchen is old and lacks a dishwasher, and the basement is only good for storage due to its low ceiling height. (Appeal).

County Assessor Matt Warner testified an additional 5% functional obsolescence was applied due to the atypical floorplan of the subject property. The assessment includes 46% physical depreciation to the dwelling. The garage also has 32% physical depreciation applied. (Ex. A).

Merrill submitted seven properties in support of her claims, which include two recent sales. (Exs. 1-7, G). The comparables are summarized in the following table.

Comparable	Year Built	Gross Living Area (SF)	Assessed Value (AV)	AV/SF
Subject – 1706 S 16th St	1941	1408	\$97,900	\$69.53
1 – 407 Barret	1918	1344	\$92,200	\$68.14
2 – 1518 Smith	1900	1545	NA	NA
3 – 1704 S 16th St	1941	828	\$55,400	\$66.91
4 – 1712 S 16th St	1883	1382	\$81,900	\$59.26
5 – 1700 S 16th St	1880	1280	\$62,100	\$48.52
6 – 1714 S 16th St	1883	836	\$42,900	\$51.32
7 – 1715 S 16th St	1940	864	\$76,500	\$88.54

Comparable 1 sold in May 2019 for \$92,000. Comparable 2 sold in February 2019 for \$90,000. Osburne testified that Diane Kroll, a local realtor relied on these two sales to estimate a value for the subject property. Osburne reported that relying on these two comparables, Kroll believes the subject should be listed for \$92,500 and would sell for \$87,000. Osburne testified Kroll's proposed listing price includes an additional vacant land parcel that adjoins the subject. He subtracted \$4,700, the assessed value of the second lot, to support a conclusion of \$82,300 to \$84,100 for the subject property. Kroll's report consisted of a hand-written note and no additional evidence regarding this analysis is in the record. Osburne and the Board of Review recognize Kroll is very reputable.

Merrill submitted Comparables 3 through 7 because of their location on the subject's street. Osburne asserts these properties had lower percentage increases in their 2019 assessments and in one case had a reduction in its 2019 assessment. The assessments of the comparable properties had a range of assessed value change from -7.4% to 12.9%. In comparison the subject had a 16% increase even after considering the Board of Review's reduction.

Warner explained there are many reasons assessed values may change at different rates year over year. He also explained the 2019 reassessment process that

took place in Des Moines County. The County contracted with Vanguard to assist in the work, including “listers” whose job it was to make notes about their observations of each property as part of the information gathering process. The listers could make changes to the property record card; and properties could be different in age or have a different style or size even if they are located next door. Warner explained Merrill’s home was built in 1941, whereas most of the neighboring properties were built in the early 1900s. He testified the differences in age would contribute to year-over-year differences in assessed values.

Osburne was critical of the Assessor’s Office for using “out of town listers.” Warner explained the listers were only used to collect data and did not directly value the subject. Osburne still questioned the accuracy of the data collected on the subject property. Warner explained the Board of Review’s decision lowered the condition of the subject from above-normal to normal to address the concerns of a lack of updating and overall deferred maintenance. (Ex. B).

In Warner’s opinion, Merrill’s Comparables 3 through 7 do not show the subject is over assessed. As previously noted, it is difficult to look at the subject’s immediate area because it is one of the newer properties in the area. Osburne disputed this noting that two of the comparables (Comparables 3 and 7) were built within a year or two of the subject. PAAB notes both of these comparable properties are significantly smaller than the subject property, which would likely contribute to their lower assessed values.

The Board of Review submitted four 2018 comparable sales and one 2019 sale. The following table is a summary of these sales. (Ex. D).

Property	Year Built	Gross Living Area (SF)	Condition	Assessed Value (AV)	AV/SF	Sale Price (SP)	SP/SF
Subject	1941	1408	NML	\$97,900	\$69.53	NA	NA
A – 1207 S 4th St	1918	1276	A NML	\$89,700	\$70.30	\$84,999	\$66.61
B – 1258 S Main St	1920	1224	A NML	\$88,300	\$72.14	\$93,900	\$76.72
C – 407 Barrett St	1918	1344	A NML	\$92,200	\$68.60	\$92,000	\$68.45
D – 518 S Garfield Ave	1910	1423	V Gd	\$101,900	\$71.61	\$99,000	\$69.57
E – 1223 S Garfield Ave	1868	1403	V Gd	\$103,300	\$73.63	\$109,000	\$77.69

The Board of Review did not adjust the sales but asserts the sale prices per square foot supports the subject’s assessed value. Comparable C is the only comparable used by both Merrill and the Board of Review.

Warner explained that when searching for comparable sales he considered properties of similar style, gross living area, condition, and the same or similar neighborhoods. In Warner's opinion these sales are the best available to show the subject's market value. These properties are older and have superior condition ratings compared to the subject.

Analysis & Conclusions of Law

Merrill contends the subject property is over assessed as provided under Iowa Code section 441.37(1)(a)(2).

Although there is no presumption the assessed value is correct, Merrill bears the burden of proving her claims by a preponderance of the evidence. §§ 441.21(3), 441.37A(3)(a); *Compiano*, 771 N.W.2d at 396-97.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). Sale prices of property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market distortion. *Id.*

Merrill relies on seven properties to demonstrate the subject property is over assessed, two of which are recent sales. According to Osburne, real estate agent Diane Kroll relied on these sales to form an opinion of value for the subject property. Kroll did not prepare a report. Other than Osburne's testimony no additional support for her opinion was submitted into the record. Without a report to review, PAAB is reluctant to conclude this hearsay evidence would shift the burden of proof to the Board of Review. Further, we are hesitant to give it significant weight.

Osburne and Bence assert Merrill's 2019 assessed value is excessive because its year-over-year increase was more than many of the nearby neighbors. Simply comparing the rate of increase of other assessments compared to the subject property is not proper methodology to support a claim of over assessment.

The Board of Review submitted five sales of properties of similar size compared to the subject and located in similar neighborhoods. The unadjusted sales prices of these properties bracket the subject's current assessment.

Viewing the record as a whole, PAAB finds Merrill has provided insufficient evidence to support her claim that the property is over assessed.

Order

PAAB HEREBY AFFIRMS the Des Moines County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.


Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.19 (2019).



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

Copies to:

Marsha Bence by eFile

Des Moines County Board of Review by eFile